



International Comparative Jurisprudence



PROBLEMS OF IDENTIFICATION AND CLASSIFICATION OF CRIMES THREATENING NATIONAL ECONOMIC INTERESTS

Aliaksandr Dzenisevich¹

Belarusian State University, Belarus

E-mail: denisevich1975@gmail.com

Received 15 November 2019; accepted 2 December 2019

DOI: <http://dx.doi.org/10.13165/j.icj.2019.12.007>

Abstract. This article covers the content of criminal law protection afforded to national economic interests, and gives the general definition of the crimes in the group taken into consideration. It then analyzes the definitions of economic crimes, and outlines the main elements of offences threatening national economic interests (object, objective part, subject) and their features. It identifies the problems connected with the application of criminal liability for the crimes in the sphere taken into consideration, including those connected with subject structure, qualifying features, and criminal policy in the sphere of the economy, forming tendencies as well as gaps in the criminal law protection of national economic interests.

Keywords: criminal law protection, national economic interests, economic crime, danger to economic safety, criminal policy, economic criminal law

Introduction

Problems in the sphere of the economy appear in connection with the criminal impact on this sphere. Economic crimes constitute a real threat to national economic interests. One of the principle elements of combating the above threat is the criminal law protection given to national economic interests, in particular opposition towards appropriate types of economic interests, the essence of which was researched in the works of authors such as Zh. Pradel, V. Zhandilje, and G. Danker.

For example, the following sub-branches were identified as components of economic criminal law by French legal scholar Zh. Pradel: economic criminal law or criminal law of the market, which includes competition and consumer protection norms; financial criminal law – i.e., fiscal and customs crimes norms, and banks and stocks norms; societies criminal law; social criminal law, which includes labor criminal law and criminal law of social security; and environmental criminal law (Pradel, 1996, p. 73). Another French lawyer, V. Zhandilje, outlines financial criminal law and economic criminal law, however he excludes social criminal law and environmental criminal law from economic criminal law (Jeandidier, 2000, p. 71).

F. Zhelfi-Tatsven, having regarded “crimes, separated from general criminal law” (echoing V. Zhandilje), divides his work into two areas: “Criminal law and market participants” and “Criminal law and market functioning.” The former considers: “Crimes common for market participants” (the violation of prohibitions on the execution of proper types of economic activities and prohibitions on the execution of economic activities by certain persons, as well as the violation of general and specific professional obligations); and “crimes being specific for commercial societies.” The latter area considers the: “Criminal law of economic exchange” (competition and commerce

¹ Candidate of Juridical Sciences, Associate Professor at the Department of Constitutional Law of Law Faculty of Belarusian State University

technique, e.g. sale, marketing, advertising); “criminal law of commercial offer” (protection norms of consumers, money circulation and a turn of securities, norms of Exchange abusing); and the “criminal law of companies being in a difficult situation” (bankruptcy, etc.) (Ghelfi-Tastevin, 2001).

In German jurisprudence, a classification used by G. Danker can be given as an example of the typical classification of norms of infringements within the national economy. This includes norms of infringements on structural elements and instruments of the state financial economy (money circulation and turn of securities, state profits and expenses) and norms of infringements on structural elements and instruments of the national economy (free competition, bank, insurance, and Exchange economy as well as investment market, loan and payment relations, relations of insurance, consumer security, measures of managing and controlling the economic sphere). It also incorporates norms of infringements on companies, their property, ability to work, economic activity, and norms of infringements on the society in general and consumers specifically (globally harmful infringements for instance connected with the physical health of a person, globally harmful property infringements, infringements on payment capacity and welfare of people) (Wabnitz & Janovsky, 2007, p. 10).

At the same time, we have to note that the current condition of criminal legislation in protecting national economic interests does not conform to modern social relations coming together in the above mentioned sphere. The norms which hold responsibility for economic crimes abound in inaccurate and ambiguous states, and there is an absence of clear criteria of distinction between crimes and administrative offences in the economic sphere and elsewhere. Particular attention needs to be focused on the criminalization of new activities in the economic sphere in connection with the appearance of new threats caused by the emergence of new digital technologies. At the same time, the *modus operandi* of the crime is being modified significantly, and new objects of criminal infringement appear (cryptocurrency being a prime example). The arguments above indicate the necessity of analyzing the existing problems in responding to the crimes threatening national economic interests in terms of their identification and classification (including the determination of criteria, conformity with which would allow us to say that the crimes listed above are included into a special group of crimes possessing significant features in criminal cases sufficient to be defined at the level of the criminal law), which is the purpose of this research.

1. Identification of the crimes threatening national economic interests taking into account features of economic crime

In the broadest possible terms, economic crime can be discussed as a socio-legal, changeable, negative, and growing phenomenon that consists of the sum of all economic crimes being committed in a given period in a country or in a region (Kuznecova & Min'kovskogo, 1998, p. 86). Some authors think that attacks against property and business crimes must be incorporated into the concept of economic crime (Mishin, 1994, pp. 33–34). For example, A. I. Dolgova (2005) indicates that economic crime is a set of selfish attacks on: properties used for economic activities, the established management of economic processes, and the economic rights of citizens by persons performing certain functions in the system of economic relations (p. 240). According to V. V. Luneev (2011), economic crime includes offences committed by corporations against the state economy, against other corporations, by officials of corporations against the corporation, or by corporations against consumers.

The destabilizing impact of economic crime is evident. It slows the development of manufacture, diverts investment capital, encourages inflation, deprives the state budget of a considerable part of profit, worsens existing economic problems, and ultimately results in powerful counteraction to transformations taking place in our country, thereby threatening the economic safety of the state in general. Furthermore, the danger of crimes in the sphere of the economy is determined by the high degree of latency, harmfulness, spoilage by organized crime and corruption, and transnationality of the most dangerous varieties.

In criminal law sciences we have a range of positions concerning a generic object of economic crimes, which include the interests of states and separate entities in the sphere of their economic activity (Borzenkova & Komissarova, 1997, p. 246). For example, the following principle types of social relations in the economic sphere

are protected by Chapter 25 of the Criminal Code of the Republic of Belarus (Ugolovnyj kodeks Respubliki Belarus, 1999) (hereinafter CC). They concern: the circulation of money, securities, and other payment documents (Articles 221, 222, 226, 226-1, 226-2, 226-3, 227 of CC); precious metals and stones (Article 223 of CC); currency values (Article 225 of CC); foreign economic activity and customs control (Articles 228-231 of CC); procedures for exercising business activities (Articles 223, 235 and 236 of CC); access to credit and return of credit and subsidies (Articles 237 and 242 of CC); exercising bankruptcy (Articles 238-341 of CC); payment of taxes and charges (Articles 243 of CC); ensuring free and fair competition (Articles 245-248, 250 and 251, 254-255 of CC); management (Articles 252 and 253 of CC); customer service (Article 257 of CC); and state economic regulation (Articles 258 and 261-1 of CC).

The types of social relations listed above are determined by the limits of state interference into the economy by means of criminal law, as these spheres of economic activity need state protection more severely and they are an important element of the state economy. Conversely, all of the listed and protected state relations are part of generic social relations that come together in the sphere of state economic management. Nevertheless, the question of the nature of crimes threatening national economic interests is fundamental to our study. We must consider whether their features are sufficient not only to deal with the relevant group of crimes within the framework of independent criminal or criminological analysis, but also to separate them at the level of the criminal law.

Consequently, mechanical synthesis of legal conceptual definition of “national economic interests” and “economic crime” allows the definition of crimes threatening national economic crimes as follows. These are socially dangerous activities, forbidden by criminal law being, committed in the procedure of the implementation of national economic interests. At the same time, such an approach does not reveal the substance of the criminal phenomenon being analyzed, but only allows us to summarize its formal features which need to be defined at the legislation level. They must also be classified in accordance with a specific object which will itself be defined in accordance with different structures of crime-specific social relations, formed in connection with the protection of national economic interests in criminal law, the content of which includes:

conducting rule formation directed to satisfy national interests in the sphere of criminal law, and requiring their fair order;

defining the most likely ways of social relations in the economic sphere being protected by means of criminal law prohibitions and prescriptions, and moving beyond the acceptable limits in accordance with the types and forms that pose a real danger of harming national economic interests;

establishing general and specific criteria for the unlawfulness of socially dangerous activities (criminal law protection), as well as defining the list of these activities in the sphere under consideration;

developing appropriate norms of criminal law (creating new general or special norms, or just modernizing existing ones);

identifying possible types and scales of penalties adequate to the seriousness of the crime in the sphere under consideration.

2. Criminal law characteristics of crimes threatening national economic interests

The dominant criterion for the disengagement of crimes threatening national economic interests from other socially dangerous acts is based on the idea of encroachment. Accordingly, public relations, which are formed in connection with the need to realize national economic interests and the need to protect them, are the object of the encroachment of the crimes under consideration. At the same time, as a classification criterion, it is advisable to single out a group that is the object of encroachment (types of national economic interests that are united in groups).

Most offences threatening national economic interests are committed by means of action in terms of objective, although there is also a number of offences which can only be committed by means of inaction as well as by means of both action and inaction. Moreover, most of them are formal in their structure so as to not necessarily invoke criminal consequences, thus there are also material offences some of which qualify for criminal consequences.

One of the clearest examples is the German Criminal Code (Raroga, 2010), where the material composition of fraud is directly amended by the formal (artificially material) compositions of economic deceptions (credit deception, deception when receiving subventions, and investment deception), that represent compositions of abstract danger. Accordingly, German jurisprudence distinguishes: 1) “dequisions of abstract danger” (abstrakte Gefährdungsdelikte – when the threat of harm to an object of encroachment does not require proof in a criminal process, and is typical of similar acts which are automatically recognized if the act is established); and 2) “specific hazard torts” (konkrete Gefährdungsdelikte – when the occurrence of a specific danger to the object of encroachment is included in the subject of proof in the case).

The issue of “reckless bankruptcy” also deserves attention. Determining the composition of crimes related to bankruptcy as material creates serious obstacles to the initiation of criminal proceedings (for example, in the case of health procedures), virtually excluding criminal prosecution of objectively high-risk public acts. At the same time, reckless bankruptcy involves the culpable causing property damage to another person, which is related to the rule on careless destruction and damage of property. Since the latter entails criminal liability, there is no reason that the former is not to be considered a crime. However, careless bankruptcy is more dangerous than destruction and damage of property by negligence, as it affects not only the property interests of creditors but also the national economy as a whole. This undermines confidence in credit relations and deprives the economy of the resources that are needed to develop it successfully. This is not an innocent insolvency, but one of guilty actions that go beyond a reasonable economic risk, and the range of punishable acts can be limited by pointing to clearly uneconomic and over-risk actions which are committed by the perpetrator, who must be mindful of the interests of the creditors who trusted them.

In addition, foreign experience shows that deliberate enrichment at someone else's expense often hides under the guise of careless bankruptcy, which is largely due to the tightening of criminal liability for traditional “reckless bankruptcy” in the course of reforms of recent decades – in particular in Germany, France, and many other advanced market economies, there is a tendency to increase accountability for the most dangerous types of mismanagement, the punishment for which is equal to the punishment for malicious (i.e., fraudulent) bankruptcy. In this regard, the composition of bankruptcy-related crimes should be regarded as formal, which would greatly simplify the prosecution of these acts and make it more effective.

Another feature of the objective side of such crimes is lack of certainty of their features in the criminal Act. This is not just about the abundance of estimated features and blanket dispositions, but also concerns the lack of clarity and precision of many economic and legal categories used in identifying features of the objective side of such offences.

In Belarusian law, the action described in Article 225 of CC is characterized by legal inaction, which involves failing to perform definite actions to provide the return of currency. However, the criminal prohibition is not well formulated, as the use of the word “non-return” prevents the effective application of this rule. In order to return any item it should initially be withdrawn, that is to say the exporter must first take out the goods and then “return” the money. Therefore, we have a problem in qualifying the actions of persons who “circulate” currency revenue long term, within the terms of its return determined by legislation.

Only legalization of the funds which were received in an initially illegal way can be convicted as punishable (Article 235 of CC). It is not clear whether only the means received illegally should be understood as: the property having been possessed by the criminal; the amount of damages caused to other persons if it differs from the value of the criminal income received by the offender (e.g., in cases of committing crimes prescribed in Articles 239 –

241, 424 of CC); or as the whole amount of means (e.g., acquired on “black” and “grey” schemes goods while committing the crime, prescribed in Articles 233, 234 of CC).

Closely related to the question of the method of tax evasion and fees is the problem of deleting tax crimes from legitimate “tax planning” and “optimization of taxation”. Characterizing the typical system of tax crimes, it becomes evident that this is based on a generalized and rigid rule on liability for tax fraud. Criminal liability should also be provided for the most dangerous “formal” violations of tax laws, usually related to deception. In particular, almost all legal systems of advanced market economies classify as dangerous crimes that include ignorance of accounting and destruction, concealment, or forgery of accounting documents, imposing a severe punishment for this (from 7 years imprisonment in the UK, up to 10 years in Germany) (Klepickij, 1998).

Scientifically based approaches to the description of qualifying and especially qualifying features of economic crimes are identified in criminal law doctrine. The problem, however, is that it is obviously not enough to detail all necessary criminal law prohibitions in the sphere under consideration, covering crimes (undoubtedly economic, conventionally economic, and related economic) relating to the violation of many principles. These include the principle of freedom of economic activity, fair competition and integrity, and the legality of its implementation in order to properly realize national economic interests. A clear example of the “gap” in criminal law prohibitions can be found in the isolation of private cases of attacks on an object of criminal law protection which have not been punished by the norms of more general articles of criminal law into separate offences. This can also be seen in derogation from the requirements of economizing normative material both in titles of articles of criminal law and inside the dispositions of criminal law norms, and the duplication of formulations contained in other branches of legislation (including norm-differentiation in notes referring to articles) in criminal law, etc.

On the subjective side, crimes threatening national economic interests can only be committed intentionally, and in most cases are characterized by direct intention. On a number of occasions, the motive or the target of crime is an obligatory feature on the subjective side. At the same time, the dominant doctrine in Belarusian criminal law does not include consciousness of unlawfulness into the content of guilt, separating consciousness of the social danger of an action from defining the intent. Therefore in these kind of situations simply “not knowing” criminal law “does not grant immunity” (e.g., not knowing the fact that tax avoidance leads to criminal liability).

Matters are even more complex in terms of not knowing the legislation in the criminal economic sphere that this Act refers to. Thus, G. A. Esakov (2002) believes that in this kind of situation the error of legal unlawfulness is not *de jure* but *de facto*. The dangers of this kind of action exists exclusively because of the non-execution of the prescription or prohibition violation prescribed by legislation. This leads to the fact that non-execution of the prescription (prohibition violation) is a part of the conceptual definition of the objective side of the crime (action). It is necessary to be conscious of this in terms of the social danger of the action (pp. 92–93).

In practice, the criminal understanding of the danger of their actions which are forbidden by the disposition of legislation providing protection for national economic interests is impeded. This is not only because of the absence of clear definition regarding the potential danger of legislation, but also as a result of serious constructive gaps appearing while formulating an objective side of the offence. The objective impossibility of providing all possible signs of multiobject attacks to national economic interests in one norm leads to the search for legislation which allows us to systematize and summarize typical methods of crime that are threatening national economic interests.

The subject of many crimes threatening national economic crimes is special. This is to suggest that, among other features, there needs to be a facultative feature necessary for this offence. As a rule, such features are connected either with the performance of certain functions and the proof of appropriate authority, or with the existence of special status. Thus, the legislation in the economic sphere regulates relations not only between individuals but also between legal entities. That is why its prohibitions and prescriptions, including those provided by a criminal sanction, are often aimed at legal entities.

Many problems are connected with this fact, and have a fundamental importance for application to the norms of the crimes in the sphere under consideration. These include whether a legal entity is legally liable for the offence who must bear responsibility for the violation of the prohibition or non-execution of the prescription aimed at the legal entity. At the same time, in many European countries, criminal liability of legal entities is not prescribed. Thus in some, such as in Germany, Spain and Italy, as well as in Russia and Belarus, administrative responsibility of legal entities exists. In some countries, subsidiary or shared liability is imposed on legal entities in terms of paying fines for the crimes committed by their representatives and in their interests.

At the same time, the possibility to prosecute legal entities including crimes in the economic sphere is prescribed by legislation in Great Britain, Ireland, the USA, Canada, Australia, in the countries of continental law – i.e., European Union countries, as well as in China and in a number of countries of the Middle East (Jordan, Lebanon, Syria) (Zhilkin, 2019). The question of whether to supplement Belarusian legislation with the norms of legal entities' criminal liability is still under consideration, and needs the further in-depth analysis particularly in consideration of its international law and criminological aspects, as well as in terms of the inevitably occurring problems of legal technique.

3. Characteristics of legal liability for crimes threatening national economic interests

Taking into account the question of the prescription of legal liability for a crime threatening national economic interests, it is necessary to consider two opposing tendencies of forming criminal procedure, and in a broader context criminal policy, in the sphere of economy:

Crime Control, when special (specific) industries and sanctions that have been either introduced or increased appear as an instrument raising the efficiency of the fight against economic crime (penalization);

Doing Business, when special (specific) industries and sanctions that have either been removed or decreased appear as an instrument of liberalization of the economic sector, and represent a maximum decrease in the risk of criminal law for economic entities, and aid in creating a privileged sector and private criminal law (decriminalization).

Thus, the Act of the Republic of Belarus No. 171–3 (O vnesenii izmenenij i dopolnenij v nekotorye kodeksy Respubliki Belarus, 2018), dated 09.01.2019, made appropriate changes in CC. These changes concerned the decriminalization of crimes such as: violation of an account opening outside the Republic of Belarus (Article 224 of CC); obstructing the lawful business activities (Article 232 of CC); false business (Article 234 of CC); violation of antimonopoly legislation (Article 244 of CC); and discrediting the business reputation of a competitor (Article 249 of CC).

At the same time, the question of how it is possible to explain the existence of two different approaches (soft and rigid) in the criminal procedure depending on the sphere of professional activity of a person (entrepreneur or other) emerges. In view of the idea that the category of “criminal offence” is to be attached to the Criminal Act being discussed, there is interest from the scientific community as follows. In U.S. legal Code as well as in the criminal legislation of North American states, criminally punishable actions are divided into misdemeanors and felonies. As I. D. Kozochkin (2009) notes, criminal punishment for the commission of the former in the form of deprivation of liberty cannot exceed one year. This can exceed one year for the commission of the latter. Each of these types of criminally punishable actions is in turn divided into categories depending on the seriousness of the action (p. 21). Similarly, German legislation divides criminally punishable action into two categories: those for which the minimum sentence for their commission in the form of deprivation of liberty is less than one year, or which potentially incur less strict types of criminal punishment; and those which are punishable by longer terms of deprivation of liberty. Conditionally, the first can be named as criminal offences and the others as crimes. German

law enforcers fairly conclude that property sanctions are more preferable than deprivation of liberty in regards to the counteraction of economic crime (Zhalinskij, 2004, p. 493).

On the basis of Belarusian “economic criminal law”, the liberal ideology of diminishing the involvement of the State in the legal relations of owners has also started to dominate. It proceeds under the assumption that the exclusion of criminal justice (the most radical law instrument for providing economic safety of the state) from the economic sphere will have a beneficial effect on the institution of property and economic activity, and will allow our economy to transform qualitatively and to turn into an innovative (digital, etc.) one.

On the other hand, the danger that the inevitability of criminal liability poses to disciplines and subjects of the economy and legal guarantees of safety for running businesses that it creates, as well as private removals of the general order of proceeding (a special order of institution and the closing of criminal proceedings and the application of preventive measures) can lead to the degradation of traditional institutions of criminal proceedings, and the realization of offers on factual decriminalization of most economic crimes can lead to the termination of law enforcement. Thus, the gaps in the protection of national economic interests by the criminal law of the Republic of Belarus are as follows: the absence of separate liability in the sphere of budget and investment relations; necessity of criminalizing severe violations of accountancy rules (ignorance, entry of false information into documents, falsification, and destruction of documents) by means of correcting Article 243 of CC; and problems in the qualification of criminal actions of organizers of false business structures, etc.

4. Classification of the crimes threatening national economic interests

Scientific literature provides a considerable number of approaches to classifying different types of crimes. Nevertheless, this matter remains to be discussed. M. H. Hakulov (2009) rightly notes that the complexity of classification of crimes in the sphere of economic activity is connected with the multi-faceted and complex structure of social relations providing a coherent and reliable basis for the functioning of the economy as a single economic unit. This must operate with the complexity of the view towards regulating these relations, with the variety of both subjects of economic crimes and victims of these commitments, as well as with the involvement of a number of other factors (p. 13).

Thus, B. V. Volzhenkin (2002) offers the following system of classifying economic crimes as those which: violate general principles of the established order of executing business and economic activities; stand against the interests of creditors; are connected with the manifestation of monopoly and unfair competition; violate the established order of currency and securities circulation; stand against the established order of foreign economic activity (customs crimes); stand against the established order of currency circulation; and stand against the established order of tax payment (tax crimes) (pp. 57–58).

T. D. Ustinova (2005) in her dissertation uses a group objective of attack as a classifying criteria, highlighting many forms of crime. These include: crimes infringing on social relations that come together as a result of providing legal and execution of business activities prescribed by the Constitution; crimes attacking social relations coming together as a result of ensuring the interests of creditors involved in economic activities; and crimes attacking social relations coming together as a result of money, securities, other payment and transaction documents as well as currency circulation. She also includes: crimes attacking social relations coming together as a result foreign economic activity; crimes attacking social relations coming together as a result of providing tax collection and other obligatory payments; and finally crimes attacking social relations coming together as a result of providing intellectual property protection and information security of the participants of economic relations (p. 77).

Depending on the protected economic good, Germany has three groups of rules: 1) supra-national (supranationale) rules on encroachment on the economy of the European Community; 2) rules on encroaching on foreign economic

relations with foreign countries; 3) rules on encroachment within the national economy (Wabnitz & Janovsky, 2007, p. 10).

In general, within the European legal space there are several blocks of legal acts (Protocols to the Convention on the Protection of the Financial Interests of the European Community of 27.09.1996), the first of which criminalized self-harm to the financial (economic) interests of the European Union and provides for harmonized sanctions against this crime (Kashkina, 1999). This is manifested in various areas and objects of criminal protection of the economic interests of the EU, including by:

protecting the EU's own financial interests through the imposition of strict criminal sanctions and the implementation of the Hercules programme;

the protection of a single economic space through EU thematic agreements with third countries (China, the Swiss Confederation, etc.), such as anti-smuggling agreements;

the protection of the EU economy from fraudulent methods and criminal practices in the use of EU financial funds, in particular from fraudulent proof of the existence of an appropriate legal basis for the implementation of contracts, from fraud in the sphere of Funding for the Agricultural Policy of the Common Market, etc.;

the protection from counterfeiting of euros through the imposition of strict criminal sanctions and new improved systems for the protection of euro banknotes and other means of payment from counterfeiting, as well as the implementation of the special program "Pericles";

the protection against corruption in the EU and a comprehensive anti-corruption policy, combating the involvement of officials of European communities in corruption, countering corruption in the private sector of the EU, and fighting international corruption (Trikoz, 2006).

On the basis of this classification, three main types of economic crimes under pan-European criminal law can be identified: money laundering, corruption, and fraud.

Paying attention to the multiplicity of approaches to classifying crimes in the economic sphere, whilst admitting their undoubted scientific value and credibility, it is possible to underline that in modern legal science a narrow approach to classifying crimes threatening national economic interests is practically absent. Taking into account social relations having complicated considerably recently, the attention paid to the above crimes is to be increased by both the scientific community and legislators. The proposed classification should contribute to this.

The following act as specific objectives of placing crime attacks under consideration: 1) social relations consolidating as a result of the realization of national economic interests; 2) social relations consolidating as a result of providing protection for national economic interests. Social relations coming together as a result of the direct implementation of criminal law protection on a given significant point, or as a result of a regulation order of specific point in economic activity (investment, credit, competitive, financial, government regulation of business, government regulation of foreign economic activity, etc.) can be highlighted inside the structure of each of the above said groups and can identify special, related, and additional elements of crime.

Significant groups of crimes of a general and special character that represent a real danger to proper realization of national economic interests depending on their types, and threats to them should be highlighted in the mechanism for the protection of the above said interests. These include: crimes in the sphere of the state management of the economy and regulation of business activity (Articles 233, 234-1, 235, 236, 258, 261-1 of CC); crimes in financial and credit spheres (Articles 221-223, 225-227, 237-242 of CC); crimes in the budget and fiscal sphere (Article 243 of CC); and crimes in the sphere of executing foreign economic activity and customs control (Articles 228-231 of CC).

Conclusions

On the basis of the above we can conclude the following:

1. Crimes threatening national economic interests should be understood as crimes attacking social relations in the sphere of state economic regulation (the generic object), coming together as a result of the realization and protection of national economic interests (specific object).

2. Features allowing the inclusion of crimes threatening national economic interests into one group are as follows:

a small degree of certainty of their features in the criminal Act (not only regarding the abundance of estimating features and blanket dispositions, but also regarding the lack of clarity of many economic and law categories used in the definition of objective features of these offences);

subjectively, crimes in the sphere of national economic interest protection can only be committed intentionally, moreover in most cases characterized by direct intent (it is more difficult to address uncertainty regarding legislation in the economic sphere the criminal Act refers to);

in practice a criminal's understanding of the danger of committing actions forbidden by legislation that protects the national economic interest is impeded. This is not only because of the lack of clarity of legislative definition of the danger, but also as a result of serious constructive defects appearing while defining the objective side of such an offence;

the subject of many crimes in the sphere of national economic interest protection is special (as a rule, these features are connected either with the execution of proper functions and the existence of authorities, or with the existence of special status).

3. A specific objective of legislation against the crimes under consideration is as follows: 1) social relations coming together as a result of the realization of national economic interests; 2) social relations coming together as a result of providing protection for national economic interests. Social relations coming together as a result of the direct implementation of criminal law protection on a given significant point or another, or as a result of regulation order of a given point or another in economic activity, can be highlighted inside the structure of each group above.

4. The following groups of crimes are the most significant, they represent a real danger to the proper realization of national economic interests, and they should be highlighted in the mechanism for the protection of the above interests: crimes in the sphere of the state management of the economy and regulation of business activity, crimes in the financial and credit spheres, crimes in the budget and fiscal sphere, and crimes in the sphere of executing foreign economic activity and customs control.

References

- Borzenkova, G. N., & Komissarova, V. S. (1997). *Ugolovnoe pravo Rossijskoj Federacii. Osobennaja chast*. Olimp; AST.
- Dolgova, A. I. (2005). *Kriminologiya [Criminology]*. Norma.
- Esakov, G. A. (2002). *Mens rea v ugovnom prave Soedinennyh Shtatov Ameriki* (PhD thesis). Retrived from <http://lawlibrary.ru/disser2012450.html>.
- Ghelfi-Tastevin, F. (2001). *Droit penal economique et des affaires*. Gualino.
- Hakulov, M. H. (2009). *Prestupleniya, posjagajushhie na svobodu i dobrosovestnost' konkurencii v sfere predprinimatel'skoj dejatel'nosti* (PhD thesis). Online access: <http://lawtheses.com/prestupleniya-posyagayuschie-na-svobodu-i-dobrosovestnost-konkurentsii-v-sfere-predprinimatelskoy-deyatelnosti>
- Jeandidier, W. (2000). *Droit penal des affaires*. Dalloz.
- Kashkina, S. Ju. (1999). *Pravo Evropejskogo Sojuza: dokumenty i kommentarii*. TERRA.
- Klepickij, I. A. (1998). Dokument kak predmet podloga v ugovnom prave. *Gosudarstvo i pravo*, 5(C), 68–75.

- Kozochkin, I. D. (2009). *Sovremennoe sostojanie i problemy ugovnogo prava SShA* (PhD thesis). Retrieved from <http://law.edu.ru/book/book.asp?bookID=1324991>
- Kuznecova, N. F., & Min'kovskogo, G. M. (1998). *Kriminologiya [Criminology]*. Izd. BEK.
- Luneev V. V. (2011). O kriminalizacii jekonomicheskikh prestuplenij predprinimatelej. *Vserossijskij kriminologicheskij zhurnal*, 4(C), 5–15.
- Mishin, G. K. (1994). *Problemy jekonomicheskoy prestupnosti (opyt mezhdisciplinarnogo izuchenija)*. Izd-vo VNII MVD SSSR.
- O vnesenii izmenenij i dopolnenij v nekotorye kodeksy Respubliki Belarus'. (2019). *Zakon Respubliki Belarus'*, 9 janv. 2019 g., № 171-Z: prinjat Palatoj predstavitelej 19 dekabnja 2018: odobren Sovetom Respubliki 20 dekabnja 2018. ETALON, *Zakonodatel'stvo Respubliki Belarus*. Nacional'nyj centr pravovoj informacii Respubliki Belarus.
- Pradel, J. (1996). *Droit penal general*. Cujas.
- Trikoz, E. N. (2006). Jekonomicheskie prestuplenija v ugovnom zakonodatel'stve Evropejskogo sojuza. *Advokat*, 10(C), 80–87.
- Raroga, A. I. (2010). *Ugolovnoe ulozhenie (Ugolovnyj kodeks) Federativnoj Respubliki Germanija: tekst i nauchno-prakticheskij kommentarij*. Prospekt.
- Ugolovnyj kodeks Respubliki Belarus. (2019). 9 ijulja 1999, № 275-Z: prinjat Palatoj predstavitelej 2 ijunja 1999: odobren Sovetom Respubliki 24 ijunja 1999. ETALON, *Zakonodatel'stvo Respubliki Belarus*. Nacional'nyj centr pravovoj informacii Respubliki Belarus.
- Ustinova, T. D. (2005). *Aktual'nye problemy ugovnoj otvetstvennosti za prestuplenija, posjagajushhie na predprinimatel'skuju dejatel'nost'* (PhD thesis). Retrieved from <http://www.dslib.net/kriminal-pravo/aktualnye-problemy-ugolovnoj-otvetstvennosti-za-prestuplenija-posjagajuwie-na.html>
- Volzhenkin, B. V. (2002). *Prestuplenija v sfere jekonomicheskoy dejatel'nosti*. Juridicheskij centr Press.
- Wabnitz, H. B., & Janovsky, T. (2007). *Handbuch des Wirtschafts- und Steuerstrafrechts*. C. N. Beck.
- Zhalinskij, A. Je. (2004). *Sovremennoe nemeckoe ugovnoe pravo*. Prospekt.
- Zhilkin, M. G. (2019). *Prestuplenija v sfere predprinimatel'skoj dejatel'nosti: problemy klassifikacii i differenciacii otvetstvennosti: monografija*. Jurisprudencija.

Copyright © 2019 by the author(s) and Mykolas Romeris University

This work is licensed under a Creative Commons Attribution International License (CC BY).

<http://creativecommons.org/licenses/by/4.0/>

